

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 23-CV-20808**

DIEGO DURAND,

Plaintiff,

v.

CITY OF MIAMI,

Defendant,

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, Defendant, CITY OF MIAMI (the “City”), by and through the undersigned counsel, hereby remove to this Court the instant action from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida. As grounds for removal Defendant states as follows:

1. The State Court action was commenced by Plaintiff, DIEGO DURAND (“Plaintiff”), with the filing of a Complaint on December 25, 2022, in the Circuit Court of the Eleventh Judicial Circuit of Florida, Miami-Dade County (Case No.: 2022-024455-CA-01).
2. On January 30, 2023, the City of Miami was served with the instant Complaint.
3. This Notice is filed within thirty (30) days after Service of the Complaint and Summons on all Defendants in accordance with 28 U.S.C. § 1446(b).
4. The Action is properly removable pursuant to 28 U.S.C. § 1441(a), which provides:

Except as otherwise expressly provided by an Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of

the United States for the district and division embracing the place where such action is pending.

5. The United States District Court has jurisdiction of the Action under 28 U.S.C. § 1331, which provides: “The district shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

6. In his Complaint, Plaintiff alleges the City (Count II) violated 42 U.S.C. § 1983 for alleged violations of Plaintiff’s rights under the Fourth Amendment to the United States Constitution. Thus, the District Court has original jurisdiction of Plaintiff’s Federal Count II.

7. Additionally, Plaintiff’s state law claim against the City (Counts I) for false arrest and is removable under supplemental jurisdiction pursuant to 28 U.S.C. § 1337(a) as it is based on the same set of facts alleged in his Federal claim in Count II, and therefore is so factually related that Count I is properly removable. *See* 28 U.S.C. § 1337.

8. Pursuant to 28 U.S.C. § 1441(a), this Court is the proper forum for removal of the Action because it is the federal court for the district and division embracing the place where the state court suit is pending.

9. Pursuant to 28 U.S.C. § 1446(d), Plaintiff is being provided with written notice of the filing of this Notice of Removal.

10. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Court for the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

11. Pursuant to 28 U.S.C. § 1446(a) copies of all process, pleadings, papers, and orders served upon the Defendants in the Action are being provided to the Court with this Notice, attached hereto as Exhibit “A”.

12. By filing this Notice of Removal, the Defendant does not intend to waive any available defenses; no admission of fact, law or liability is intended by this Notice of Removal, and all defenses, affirmative defenses and motions are hereby reserved. The City consents to the removal of the Action from State Court to the Southern District of Florida.

WHEREFORE, Defendants, CITY OF MIAMI, hereby remove this case from the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, to the United States District Court for the Southern District of Florida, and respectfully request that the Court exercise jurisdiction over this matter and proceed with resolution of this case as if it had been originally filed herein.

Dated: March 1, 2023

VICTORIA MÉNDEZ, City Attorney
BRANDON L. FERNANDEZ,
Assistant City Attorney
Attorneys for **City of Miami**
444 S.W. 2nd Avenue, Suite 945
Miami, FL 33130-1910
Tel.: (305) 416-1800
Fax: (305) 400-5071
Email: BFernandez@miamigov.com
Secondary Email: smfernandez@miamigov.com

By: /s/ Brandon L. Fernandez
Brandon L. Fernandez
Assistant City Attorney
Florida Bar No. 1002969

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of March, 2023, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic

Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Brandon L. Fernandez
Brandon L. Fernandez
Assistant City Attorney
Florida Bar No. 1002969

SERVICE LIST

Carl Palomino, Esq.
Law Offices of Carl Palomino, P.A.
717 Ponce De Leon Blvd., Ste 203
Coral Gables, Florida 33134
attorneycarlpalomino@gmail.com
pleadingsserved@gmail.com
Attorney for **Plaintiff**